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***Via Certified Mail –
Return Receipt Requested***

August 16, 2019

AUG 20 2019

Rick Otto - City Manager
Members of the City Council
City of Orange
300 E. Chapman Ave.
Orange, CA 92866

Christopher Cash - Public Works Director
Head of Agency
City of Orange
300 E. Chapman Ave.
Orange, CA 92866

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Otto, Member of the City Council, Mr. Cash and Head of Agency:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of the City of Orange's sewage collection system.

River Watch hereby places the City of Orange ("City") as owner of its sewage collection system on notice, that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Santa Ana Region, Water Quality Control Plan ("Basin Plan") as the result of alleged unlawful discharges of sewage from the City's sewer pipelines to Tustin-Wanda Channel, Bitterbush Channel, El Modena-Irvine Flood

Control Channel, Buckeye Channel, Haster Basin, Handy Creek, Santiago Creek, the Santa Ana River and the Pacific Ocean - all waters of the United States, and for violations of the Santa Ana Region Municipal Separate Storm Sewer System (MS4) Permit ("MS4"), NPDES Permit No. CAS618030.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System ("NPDES") permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a permit limit places a discharger in violation of the CWA. River Watch contends the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a), 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board ("SWRCB") and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Regional Water Quality Control Board, Santa Ana Region ("RWQCB").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

- 1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated**

River Watch has identified discharges of sewage from the City's sewage collection system to waters of the United States, without an NPDES permit, in violation of CWA § 301(a), 33 U.S.C. § 1311(a), which states in part: "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful." These discharges are also in violation of the *Santa Ana Region Municipal Separate Storm Sewer System (MS4) Permit* ("MS4"), NPDES Permit No. CAS618030, governing the discharges from the municipal separate storm sewer systems draining the watersheds within the Santa Ana Region.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from August 16, 2014 to August 16, 2019, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have the likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

i. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs"), in which untreated sewage is discharged above-ground from the collection system are alleged to have occurred both on the dates identified in California Integrated Water Quality System ("CIWQS") Interactive Public SSO Reports, and on the dates when no reports were filed by the City, all in violation of the CWA.

The City's aging sewage collection system has historically experienced high inflow and infiltration ("I/I") during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure, causing SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains connected to adjacent surface waters including Tustin-Wanda Channel, Bitterbush Channel, El Modena-Irvine Flood Control Channel, Buckeye Channel, Haster Basin, Handy Creek, Santiago Creek and the Santa Ana River - all waters of the United States.

A review of the CIWQS Spill Public Report - Summary Page identifies the "Total Number of SSO locations" as 114 with 113,652 "Total Vol. of SSOs (gal)" discharged into the environment. Of this total volume, the City admits at least 63,944 gallons, or 56% of the total, reached a surface water. This discharge poses both a nuisance pursuant to California Water Code § 13050(m) and an imminent and substantial endangerment to health and the environment.

A review of the CIWQS SSO Reporting Program Database specifically identifies 34 recent SSOs reported as having reached a water of the United States, identified by Event ID numbers 858080, 857107, 855142, 854155, 853940, 853484, 852102, 850731, 846986, 846653, 846632, 845938, 845687, 845039, 844766, 841593, 841058, 841022, 840699, 835826, 833793, 831881, 827831, 824379, 822256, 821886, 821139, 820418, 816585, 815917, 812344, 811611, 811544, and 809634. Included in the 34 reported SSOs are the following incidents:

October 21, 2017, Event ID# 841058 - (Coordinates: 33.79247-117.79221) an SSO estimated at 30,906 gallons occurred at a manhole at 5749 E. Creekside Avenue as a result of "Root Intrusion." An estimated 20,906 gallons were discharged to the El Modena-Irvine Flood Control Channel.

May 1, 2019, Event ID# 858080 - (Coordinates: 33.833234 -117.812422) an SSO estimated at 1,053 gallons occurred at 2644 N. Waterford Street as a result of "root intrusion." Only 243 gallons were recovered, with 810 gallons spilling into the Tustin-Wanda Channel.

October 26, 2018, Event ID# 852102 - (Coordinates: 33.78636 -117.88139) an SSO estimated at 400 gallons occurred at 180 S. Anita Drive caused by "Grease Deposition (FOG)." An estimated 228 gallons discharged into the Santa Ana River.

All of the above-identified discharges are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act.

ii. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the City as not reaching a surface water did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. River Watch's expert also believes that a careful reading of the time when the SSO began, the time the City received notification of the SSO, the time of its response, and the time at which the SSO ended, too often appear as unlikely estimations. For example:

January 15, 2016 (Event ID# 821139) - (Coordinates: 33.784069 - 117.835636) A spill of 124 gallons was reported at 273 S. Tustin Street due to grease deposition (FOG). The spill start time is reported as 20:00, the agency notification time as 20:15, and both the estimated operator arrival and spill end at 20:35.

January 15, 2015 (Event ID# 812344) - (Coordinates: 33.789653 -117.866031) A spill occurred at 191 N Main Street due to grease deposition (FOG). The spill start time is reported as 05:45 and the agency notification as just five minutes later at 05:50. The operator arrival is estimated at 06:25, and the spill end time is reported as 05:50, thirty-five minutes before the operator arrival and at the same time as the agency notification.

September 29, 2014 (Event ID# 809634) - (Coordinates: 33.800636 -117.771272) The estimated spill is 34 gallons. The spill start time is estimated at 18:30 and the agency notification at more than two hours earlier at 16:15. The operator arrival time is estimated at 17:12, more than an hour before the spill start. The estimated spill end is reported as 18:45, just fifteen minutes after the spill start time. The estimated spill is 34 gallons.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Without correctly reporting the spill start and end time, there is a danger that the duration and volume of a spill will be underestimated.

b. Failure to Warn

River Watch contends the City is understating the significance of the impacts of its CWA violations by failing to post health warning signs for numerous discharges reaching a surface water, identified by the following Event ID numbers: 858080, 857107, 855142, 854155, 853940, 853484, 852102, 850731, 846986, 846653, 846632, 845938, 845687, 845039, 844766, 841593, 841058, 841022, 840699, 835826, 833793, 831881, 827831, 824379, 822256, 821886, 821139, 820418, 816585, 815917, 812344, 811611, 811544, and 809634.

iii. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of its SSOs. The City is subject to the requirements of the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements* Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further

remedial actions including intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the sewage collection system to prevent further SSOs at the site.

A critical remedial measure is the performance of adequate sampling to determine the nature and the impact of the release. As the City is underestimating SSOs which reach surface waters, River Watch contends the City is not conducting sampling on most SSOs.

The EPA's "*Report to Congress on the Impacts of and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. There is no record of the City performing any analysis of the impact of SSOs on aquatic or wildlife habitat, nor any evaluation of the measures needed to restore water bodies designated as habitat from the impacts of SSOs.

B. Failure to Comply with the MS4 Stormwater Permit.

The City's MS4 is a system of conveyances intended to carry stormwater. It is connected to storm drain pipes which discharge into neighboring surface waters. However, SSOs bring sewage into the MS4 and in turn into waterways connected to, and downstream of, the MS4. River Watch contends the City fails to adequately comply with the discharge prohibitions of its MS4 Permit (Section III. *Discharge Limitations/Prohibitions*), which states in relevant part:

1. "In accordance with the requirements of 40 CFR 122.26(d)(2)(i)(B) and 40 CFR 122.26(d)(2)(i)(F), the permittees shall prohibit illicit/illegal discharges (non-stormwater) from entering into the municipal separate storm sewer systems unless such discharges are either authorized by a NPDES permit, or not prohibited in accordance with Section III.3, below."
2. "The discharge of stormwater from the MS4s to waters of the U.S. containing pollutants that have not been reduced to the maximum extent practicable is prohibited."
3. "The permittees shall effectively prohibit the discharge of non-stormwater into the MS4s, unless such discharges are authorized by a separate NPDES permit or as otherwise specified in this provision ..."
6. "Discharges from the MS4s shall be in compliance with the applicable discharge prohibitions contained in Chapter 5 of the Basin Plan."
7. "Discharges from the MS4s of stormwater or non-stormwater, as defined in Section III.3, shall not cause or contribute to a condition of pollution,

contamination or nuisance, as those terms are defined in Section 13050 of the Water Code.”

All SSOs which reach a storm drain or storm drain conveyance are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future. In addition, all of these discharges pose both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to health and the environment.

C. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections. River Watch contends untreated sewage is discharged from cracks, displaced joints eroded segments, etc., in the City’s sewage collection system into groundwater hydrologically connected to surface waters including, but not limited to, Tustin-Wanda Channel, Bitterbush Channel, El Modena-Irvine Flood Control Channel, Buckeye Channel, Haster Basin, Handy Creek, Santiago Creek and the Santa Ana River. Surface waters then become contaminated with pollutants including human pathogens. Chronic failures in the sewage collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other collection systems have verified the contamination of the adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found from the City’s sewage collection system which reaches a surface water is a discharge of a pollutant to a surface water without a NPDES permit, and therefore a violation of the CWA.

D. Impacts to Beneficial Uses

Tustin-Wanda Channel, Bitterbush Channel, El Modena-Irvine Flood Control Channel, Buckeye Channel, Haster Basin, Handy Creek, Santiago Creek and the Santa Ana River have many beneficial uses as defined in the RWQCB’s Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Santa Ana River is the largest river entirely in Southern California at 96 miles long. It has its headwaters in the San Bernardino Mountains at the confluence of Heart Bar Creek and Coon Creek, at an elevation of 6,991 feet. The River flows west through a wide, deep and heavily forested mountain valley, then turns south, passing through the Seven Oaks Dam and reaching the Inland Empire lowland covering large parts of San Bernardino County and Riverside County. The River receives Mill Creek and passes to the south of San Bernardino before receiving City Creek from the north and San Timoteo Creek from the south. Due to water diversions from groundwater recharge, the river bed is usually dry in this stretch between Mill Creek and the outlet of the Veolia Treatment Plant north of Riverside, which restores a year-round flow. From there to Prado Dam the River supports a riparian zone. Just past the confluence with San Timoteo Creek, Lytle Creek enters from the north. Two major tributaries of the River join in the reservoir area: Chino Creek from the north and Temescal Creek from the south. Below Prado Dam, the River crosses into Orange County and cuts between the Santa Ana Mountains and Chino Hills via Santa Ana Canyon. The River receives Santiago Creek from the east before entering Santa Ana. The mouth of the River is located in a small tidal lagoon between Huntington Beach and Newport Beach, at the northern end of Santa Ana River County Beach. The Santa Ana River Reach 2, which goes through the City, is listed under CWA § 303(d) as an impaired body of water for Indicator Bacteria.

Santa Ana River Watershed is Southern California's largest watershed covering nearly 3,000 square miles and containing portions of Los Angeles, Riverside, San Bernardino and Orange Counties. It is made up of 50 tributaries and is home to a population exceeding 4.5 million. The southern part of the Watershed, drained by the San Jacinto River into Lake Elsinore and via Temescal Creek into the Santa Ana River, constitutes some 45% of the total area and extends its boundaries as far south as the Colorado Desert at Anza-Borrego Desert State Park.

Over 10 distinct vegetation zones in the Santa Ana River Watershed support up to 200 bird species, 50 mammal species, 13 reptile species, 7 amphibian species and 15 fish species. Endangered species in the Watershed include steelhead trout, the slender-horned spineflower, Mountain yellow-legged frog, arroyo toad, southwestern willow flycatcher, least Bell's vireo, San Bernardino kangaroo rat, and Santa Ana River woollystar - which cannot be found anywhere else in the world. The Santa Ana sucker fish and coastal California gnatcatcher are listed as threatened.

Santiago Creek, one of the many tributaries to the Santa Ana River, is approximately 34 miles long and drains into most of the northern Santa Ana Mountains. The Santiago Creek watershed covers some 100 square miles in northern Orange County. The upper part of the Creek is free-flowing but is mostly channelized past the Villa Park Dam. The lower, more urbanized section of the Creek goes through Tustin, Orange, and Santa Ana. The Creek empties into Irvine Lake, a 700-acre reservoir formed

by the Santiago Dam. Irvine Lake provides water to Villa Park and Orange via a pipeline and flume to Peters Canyon Reservoir.

Historically Santiago Creek supported a rich riparian community including mountain lions, bobcats, coyotes and steelhead trout. With the construction of the Villa Park and Santiago Creek Dams, the steelhead spawning runs have been destroyed. However, 13 specimens of the land-locked, native form of steelhead, rainbow trout were found in Harding Canyon. Santiago Creek is listed under CWA § 303(d) as an impaired body of water upstream of the discharge area for Salinity/TDS/Chlorides.

River Watch is extremely concerned regarding the effects of surface, underground, and unreported SSOs on critical habitat in and around the diverse and sensitive ecosystems of the Tustin-Wanda Channel, Bitterbush Channel, El Modena-Irvine Flood Control Channel, Buckeye Channel, Haster Basin, Handy Creek, Santiago Creek and the Santa Ana River including risks to the health of those who recreate in, and consume fish from those ecosystems.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of Orange and those of its employees responsible for compliance with the CWA and with any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its collection system as further described in this Notice.

The City is located approximately 30 miles from Los Angeles. It covers a total area of over 25 square miles and supports a population, as of 2014, of 139,812. The economy is dominated by the health sector with the University of Irvine Medical Center, Sisters of St. Joseph Hospital, and Children's Hospital of Orange County employing more than 10,000 people.

The City owns the local sewage collection system which feed regional truck lines owned by the Orange County Sanitation District (OCSD). OCSD is responsible for the treatment of residential, commercial and industrial sewage. Collected effluent is treated at Reclamation Plant No. 1 in Fountain Valley or Treatment Plant No. 2 in Huntington Beach. OCSD operates the regional collection mains and treatment plants, and the City is responsible for the daily operation and maintenance of the local sewage collection system.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is August 16, 2014 through August 16, 2019. River Watch may from time to time update this Notice to include violations of the CWA by the City which occur during and after the range of dates currently covered. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its mailing address is 290 South Main Street, #817, Sebastopol, California, 95472. River Watch is dedicated to protecting, enhancing, and helping to restore surface waters and groundwater of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications with respect to this Notice should be directed to counsel identified below:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the City's staff to tailor remedial measures to the specific operation of the sewage collection system. In advance of that conversation, River Watch identifies the following issues for discussion that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. Determining the specific sewage collection system repairs required, and establishing deadlines for compliance.
2. Implementation of an effective SSO reporting and response program.

3. Provision of a lateral inspection and repair program.
4. Ensuring application of chemical root control complies with the federal EPA or the RWQCB as well as the manufacturer and Cal-OSHA requirements.
5. Keeping the Sewer System Management Plan up-to-date and properly certified.
6. Promoting staff training and education.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who may reside and recreate in the affected community and use the affected watershed for recreation, fishing, horseback riding, hiking, photography, nature walks, and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,883.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 CFR §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch encourages the City to contact counsel for River Watch within **20 days** after receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



Jack Silver

JS:lhbm

Service List

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